

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

SADRI SHIR, NAWAD SHIR, and
PORTLAND MASJID AND ISLAMIC
CENTER

Plaintiffs

V.

CITY OF PORTLAND,

Defendant

Civil Action No. 2:09-CV-370

**MOTION TO AMEND CONSENT ORDER
AND
REQUEST FOR EXPEDITED HEARING
(AND INCORPORATED MEMORANDUM OF LAW)**

NOW COMES Defendant, City of Portland, and hereby moves that the Consent Order be amended as follows:

1. This matter involves a challenge by Plaintiffs to Defendant City of Portland’s Land Use Code (the “Code”) based on, among other things, the U.S. Constitution and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) of 2000, 42 U.S.C. §§ 2000cc, *et seq.*
2. Plaintiffs primarily contend that the City has violated their “religious-liberty rights under the First Amendment to the U.S. Constitution” and RLUIPA “by various actions taken pursuant to” the Code that have allegedly prevented them from using the building located at 978 Washington Avenue (the “Property”) for religious purposes. Consent Order at p. 1.

3. In an effort to resolve the Plaintiffs initial request for a temporary restraining order, the parties agreed to enter a Consent Order, which specified that during the pendency of this litigation the Plaintiffs would be allowed to continue their religious use of the Property. See Consent Order at pp. 1-3.
4. The Consent Order further specified that the City would not take any adverse land-use action against the Plaintiffs (e.g. denying site plan approval), and the Plaintiffs agreed “to pursue site plan approval for the paving of the parking lot on the Property.” Consent Order at p. 2 at paragraphs 3 and 4.
5. Despite repeated requests by the City over several months, to date Plaintiffs have failed to submit a completed site plan application to address the unapproved alterations of the Property (i.e. paving of the parking area abutting the building on the Property) as required by the Code. See § 14-522 and 14-523.¹
6. Recent correspondence from one of the attorneys for the Plaintiffs in this case demonstrates that the Plaintiffs do not intend to file or implement a site plan that complies with the City’s Code. See letters attached hereto as Exhibits A and B.
7. The purpose of the Code’s site plan requirements is to limit, control or prevent the negative impacts of a proposed use on abutting properties and the public.
8. The direct abutters to the Property have suffered and continue to suffer damage as a result of water drainage and other impacts caused by the Plaintiffs aforementioned illegal, unapproved site alterations. See pictures attached hereto as Exhibit C.
9. Given the on-going nature of the drainage issues and other impacts caused on the abutter’s property, and the Plaintiffs continuing failure to submit a site plan, the City

¹ A site plan is required for the construction of a parking area and the alternation of a watercourse, drain or swale. See §§ 14-522 and 14-523.

requests that the Consent Order be amended to allow it to proceed with a land use enforcement action against the Plaintiffs based on the Code's site plan requirements, and that an expedited hearing be scheduled with regard to this Motion.

WHEREFORE, for the reasons stated above, Defendant City of Portland hereby respectfully requests that the Consent Order be amended to allow it to pursue a land use enforcement action against the Plaintiffs, and that an expedited hearing be scheduled.

Dated: November 19, 2009

/s/Gary C. Wood
Gary C. Wood, Esq.
Maine Bar No. 1121

City of Portland
Office of Corporation Counsel
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Portland, Maine 04101
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CERTIFICATE OF SERVICE

I, Gary C. Wood, do hereby certify that I have, this 19th day of November, 2009, served the foregoing document and proposed order via first class mail, postage prepaid, to the following persons:

David A. Lourie
189 Spurwink Avenue
Cape Elizabeth, ME 04107-9604

Zachary L. Heiden
MCLU Foundation
401 Cumberland Avenue, Suite 105
Portland, ME 04101